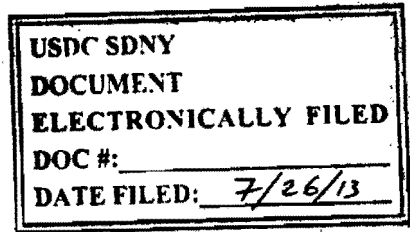


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



STEVEN CHAMBERS, KAISER RAFIQ, TONY
OWENS, DORIAN CARR, and LONNIE HARRIS,

Plaintiffs,

-v-

CITY OF NEW YORK et al.,

Defendants.

12 Civ. 3341 (PAE)(JCF)
12 Civ. 5860 (PAE)(JCF)
12 Civ. 8623 (PAE)(JCF)
12 Civ. 8871 (PAE)(JCF)
13 ~~12~~ Civ. 0671 (PAE)(JCF)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the May 24, 2013 Report and Recommendation of Magistrate Judge James C. Francis IV, recommending that the Court dismiss plaintiffs' complaints for failure to state a claim (the "Report"). For the reasons that follow, the Court adopts the Report in full as to all plaintiffs.

I. Background

The five *pro se* plaintiffs identified above bring similar lawsuits pursuant to 42 U.S.C. § 1983 against the City of New York (the "City"), Correction Commissioner Dora B. Schriro, Mayor Michael Bloomberg, Dr. Jean Richards of Corizon (a correctional healthcare services provider), and/or Commissioner Thomas R. Frieden of Health and Hospitals Correctional Services. The plaintiffs, who were or are inmates or detainees in the custody of the New York City Department of Correction on Rikers Island ("AMKC"), allege violations of their Eighth Amendment rights and seek injunctive relief as well as compensatory and punitive damages. They primarily allege that they have not been provided with proper beds—that is, that the beds are too short, too thin, or otherwise uncomfortable. *See* Report 2–4 (summarizing claims).

The City has moved to dismiss the complaints pursuant to Federal Rule of Civil Procedure 12(b)(6). *See, e.g.*, No. 12 Civ. 3341, Dkt. 18–20. None of the five plaintiffs opposed the motion to dismiss. On May 24, 2013, Judge Francis issued the Report, recommending that the City’s motion to dismiss the complaints be granted. The deadline for the parties to file objections to the Report was June 7, 2013. As of today, no objections have been filed.

II. Discussion

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). To accept those portions of the report to which no timely objection has been made, “a district court need only satisfy itself that there is no clear error on the face of the record.” *Carlson v. Dep’t of Justice*, No. 10 Civ. 5149 (PAE)(KNF), 2012 WL 928124, at *1 (S.D.N.Y. Mar. 19, 2012) (citation omitted); *see also Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

The Report recommends that all five plaintiffs’ complaints be dismissed for failure to state a claim. Because none of the plaintiffs here have submitted objections to the Report, a review for clear error is appropriate. Careful review of the Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “[f]ailure to file timely objections will preclude appellate review,” Report 9, these plaintiffs’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989)).

The Court emphasizes that in adopting the Report, it is also adopting Judge Francis’s recommendation that plaintiffs be granted permission to amend their complaints to state a claim,

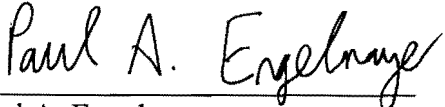
if the facts so support, of an Eighth Amendment violation. *See* Report 8–9. Plaintiffs are advised that any such complaint, to be viable, must plausibly make out the elements of a violation of the Constitution, and must allege the elements of municipal liability or the personal involvement of the individual named defendant(s). The requirements to adequately plead such claims are set out in previous Reports of Judge Francis, which were mailed to plaintiffs along with a copy of the Report in this case.

CONCLUSION

For the reasons stated herein, the Court adopts the Report in full. Plaintiffs' complaints are hereby dismissed with leave to file an amended complaint. The Clerk of Court is directed to terminate any motion to dismiss pending in the cases listed above, and to close the cases. The cases may be reopened without prejudice if a plaintiff files an amended complaint within 45 days.

Finally, the Clerk of Court is respectfully directed to serve this Opinion and Order on each of the plaintiffs named in the caption at his address of record.

SO ORDERED.


Paul A. Engelmayer
United States District Judge

Dated: July 25, 2013
New York, New York